

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

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In the Matter of)
the 4.9 GHz Band Transferred from) WT Docket No. 00-32
Federal Government Use)

**REPLY COMMENTS OF ADVANCED TELCOM GROUP
REGARDING NOTICE OF PROPOSED RULEMAKING**

Advanced TelCom Group, Inc. ("ATG") submitted initial comments in this rulemaking proceeding. ATG now takes the opportunity afforded by the Commission in its *Notice of Proposed Rulemaking* ("NPRM")¹ to reply to the comments of others filed in this proceeding.

I. The Commission should impose some reasonable restrictions on eligibility to obtain a license in the 4.9GHz band.

Some comments² have requested no eligibility restrictions for licensing. ATG believes that the Commission should limit eligibility to those applicants that do not hold a license for any other wireless services, with the exception of point-to-point licenses, for the same market area in the 4.9 GHz band. ATG is not proposing to bar current licensed spectrum holders from obtaining licensed spectrum in *all* areas, but only to prevent the accumulation of licenses in a *single* area. ATG's proposal would effectively block wireless services providers from monopolizing licensed spectrum in a given market. ATG believes that this restriction is reasonable, is consistent with the policy goals of the Commission, and should be adopted.

II. The Commission should use smaller geographic areas to ensure that service will be provided to all citizens.

ATG supports the comments filed by the U.S. Small Business Administration and the Rural Telecommunications Group requesting that the Commission utilize MSAs and RSAs,

¹ *In the Matter of The 4.9 GHz Band Transferred from Federal Government Use*, WT Docket No. 00-32 (rel. Feb. 29, 2000).

² See, Comments of The Rural Telecommunications Group at p. 11; Comments of Coloma Partners, LLC at p. 5.

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rather than EAs, as the geographic boundaries for such licenses in the 4.9 GHz band.³ There are two related reasons why the use of MSAs and RSAs, rather than EAs, better implements the important public policies identified by the Commission.

First, the size of the EAs and the large cities they encompass will make it impossible for smaller providers to obtain licenses economically for this spectrum. For ATG to obtain a license to serve the smaller cities and towns in its home market in Sonoma and Marin counties, north of the Golden Gate Bridge, it would have to obtain a license to serve San Francisco and San Jose. Obviously the cost of that license would be prohibitive, and would effectively prevent ATG from seeking the license. However, if a larger company were to obtain a license for San Francisco and San Jose, which also included Sonoma and Marin Counties, across the bay, it is unlikely that such the larger company would provide service to the much smaller markets at any time in the near future, if at all. This pattern will be replicated throughout the country, because many EAs group larger cities with smaller communities from which they are geographically and economically distinct. The problem is likely to be even more severe in more rural communities, where population densities are lower, and the investment required per subscriber is often larger. Utilization of EAs, rather than MSAs and RSAs, will make it less likely that the 4.9GHz spectrum will be utilized to provide innovative wireless services to rural citizens and residents of smaller cities and towns across the country in any reasonable timeframe.

A related reason for utilizing MSAs and RSAs is that the companies that obtain these licenses will have the same incentives to develop the licenses for large and small markets. (Of course, this will require, as ATG recommends, that the Commission apply same development requirements and safe harbor provisions to all markets). A license holder for the Santa Rosa MSA could not satisfy the development and safe harbor requirements for the Santa Rosa MSA by building out San Francisco and San Jose. However, a license holder for the proposed EA

³ Comments of U.S. Small Business Administration, pp. 2-4; Comments of The Rural Telecommunications Group, pp. 5-10.

which includes San Francisco and San Jose and Santa Rosa could choose to ignore Santa Rosa entirely, due to the huge population imbalances involved.⁴

ATG recognizes that there may be a somewhat greater agency administrative burden involved in developing licenses based on MSAs and RSAs, because there are roughly two and a half times as many MSA/RSA units as there are EAs. However, the added burden is more than offset by the much greater likelihood that the Commission will actually reach its important public policy goals for the new spectrum by licensing by MSAs and RSAs. If the Commission is to achieve its goals of ensuring service to rural areas and promoting investment and rapid deployment of new technologies, it must adopt geographic areas which compel those parties which obtain those licenses to do exactly that.⁵

The Commission may look on permissive partitioning and disaggregation of licenses as a viable alternative to the licensing of geographic areas smaller than EAs.⁶ However, this is not the case. Because of the geographic imbalances described, there is nothing to prevent larger companies that obtain EAs from warehousing spectrum for possible use in the distant future, rather than partitioning and disaggregating. To best serve the Commission's deployment and technology goals for new services in less urban areas, the Commission should therefore license this spectrum on the basis of MSAs and RSAs.

III. The Commission should not divide the spectrum into two 25 megahertz wide blocks.

ATG opposes the proposal of Coloma Partners to divide this spectrum up into two separately licensed, 25 MHz wide blocks.⁷ ATG believes that any effective two way, cellularized use of this spectrum will require that the entire spectrum be licensed as single block. ATG agrees with Global Frontiers, Inc. that dual licensing of less than the entire 50MHz block to

⁴ For example, United States Census Bureau estimates for 7/1/98 show approximately 4,000,000 residents in the combined San Francisco and San Jose PMSAs, compared with approximately 430,000 residents in the Santa Rosa PMSA. See <http://www.census.gov/population/estimates/metro-city/ma98-01.txt>.

⁵ See NPRM, at ¶ 44.

⁶ See NPRM at ¶¶ 51-57.

⁷ Comments of Coloma Partners, LLC, pp. 4-5

a single licensee will effectively limit the technologies which can be deployed in this spectrum.⁸ Instead of dual licenses in the same geographic area in this spectrum, the Commission should adopt ATG's proposals for smaller geographic areas, and restrictions on ownership to prevent local monopolization of licensed spectrum.

IV. The Commission should adopt a single standard for all small businesses.

ATG has proposed that the Commission utilize a single small business standard for smaller businesses for purposes of applying bidding credits.⁹ Small businesses, under ATG's proposal, are any firms with average annual gross revenues for the three preceding years not in excess of \$40 million, which would receive a bidding credit of 25 percent. ATG opposes the proposal of the Rural Telecommunications Group, which would treat some companies differently based on factors other than the size of the company.¹⁰ The point of the bidding credit is to level the playing field to a degree, to permit smaller businesses to obtain licenses without exhausting their capital, so that they are in a financial position to engineer, build out and operate their systems. There is no reason to give rural wireline companies any advantage, which does not inure to them by virtue of their size. To provide otherwise would create a discriminatory advantage in favor of some smaller businesses, merely because of their business activities in another market. Rural wireline companies, which meet the small business criteria, should qualify for the bidding credit, and those that do not meet those criteria should not qualify.

V. Conclusion

ATG believes that by auctioning the 4.9 GHz band, the Commission will serve the public interest by making additional services available. However, modifications should be made to the NPRM's licensing areas and conditions, as ATG has proposed, to prevent monopolization of licensed frequencies and ensure that smaller cities and towns and rural areas will more quickly realize the benefits of new technologies utilizing this spectrum.

⁸ Comments of Global Frontiers, Inc., pp. 15-16.

⁹ See NPRM, at ¶ 101.

¹⁰ Comments of The Rural Telecommunications Group, pp. 5-7.

Respectfully submitted,

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